



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-S-

DATE: NOV. 1, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a mathematics researcher, electrical engineer, and educator seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we find that the Petitioner has not sufficiently identified or provided consistent information and evidence regarding his proposed endeavor.

With respect to his proposed endeavor, the Petitioner asserted at the time of filing that "he will seek employment as full-time faculty at an American university engaging in instruction, research, and public service. Additionally, [the] Petitioner will seek out other academic activities including funded research, knowledge transfer activities, and community outreach." He further indicated that he "intends to obtain employment in one of three fields; Pure Mathematics, Applied and Computational Mathematics, and Applied and Theoretical Physics."³ While the Petitioner identified various U.S. universities that have "Departments of Mathematics," he did not specifically explain the work he proposes to undertake at those universities or provide evidence to support or clarify his research plans.⁴

The Director issued a request for evidence (RFE) asking the Petitioner to provide "a detailed description of the proposed endeavor and why it is of national importance," including supporting evidence demonstrating "the endeavor's potential prospective impact." In response, the Petitioner indicates that his plans include research aimed at "solving 14 unsolved problems in Analytic Number

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ In part 6 of the Form I-140, under "Basic Information About the Proposed Employment," the Petitioner did not list a job title or provide a description of his proposed work. According to his Form ETA-750B, Statement of Qualifications of Alien, the Petitioner is seeking work as a "Professor/Researcher." The information provided on this form indicates that the Petitioner's last job involved working as "Chief of Advanced Studies and RCS" (Radar Cross Section) for [REDACTED] from November 1997 until May 2014. The Form ETA-750B does not identify any employment experience for the Petitioner after May 2014.

⁴ The Petitioner provided a "Personal Statement" listing multiple U.S. universities where he believes that he is "qualified to take a faculty position" (including University of Texas at Austin, Texas A&M University, and Rice University), but did not provide evidence of any communications with these institutions about potential research or teaching positions or other evidence clarifying the nature of the work he proposes to undertake as a faculty member. As the Petitioner is applying for a waiver of the job offer requirement, he need not have a job offer from a specific employer. Nevertheless, information about the nature of his proposed endeavor is necessary for us to determine whether it has substantial merit and national importance, and whether he is well positioned to advance such an endeavor.

Theory field,” and that he intends to continue his “research in the other unsolved problems [such] as Beal’s conjecture and Riemann’s Hypothesis.” The Petitioner also contends that he will pursue “applied and computational mathematics and engineering including continuing RCS research & development.” Furthermore, he discusses his “plan to do research in Electronic & Control Engineering including Automatic Flight Control System (AFCS) for helicopters and airplanes (autopilot) in the Aeronautical Design Centers of the U.S.”⁵ Finally, the Petitioner indicates that he intends to seek U.S. patents for his aeronautical systems inventions. While the Petitioner has identified a wide variety of possible research topics in areas such as pure mathematics, applied and computational mathematics, applied and theoretical physics, aeronautical engineering, and electronic and control engineering, the record does not include sufficient information or supporting documentation to corroborate which of these varying proposed research areas he will work on in the United States, nor has he identified research projects he intends to undertake to advance RCS or AFCS development in this country.⁶

The Petitioner’s RFE response includes a letter from [REDACTED], a professor in the Department of Electrical and Computer Engineering at [REDACTED] stating: “Most RCS work will require a security clearance, which may be difficult for [the Petitioner] to obtain. However, there are still opportunities to do ‘generic’ research in RCS and electromagnetic scattering at the unclassified level.” [REDACTED] further indicates that an area in which the Petitioner “could possibly contribute is the analysis and simulation of new materials for absorbing electromagnetic waves.” However, the Petitioner has not articulated whether it is his intent to perform such work or in what capacity he would do so. The Petitioner also presents a letter from [REDACTED], a professor at [REDACTED] and editor-in-chief of [REDACTED] asserting: “I have known [the Petitioner] since 2008. He has discussed with me many projects and I have had many opportunities to communicate with him regarding various subjects.” While [REDACTED] contends that the Petitioner “seeks employment in the field of mathematics and electrical engineering,” he does not discuss the capacity in which the Petitioner will work in these areas or the specific nature of his future U.S. research endeavors.

The record also contains *Wikipedia* articles about RCS and Goldbach’s conjecture (an unsolved number theory problem), an abstract discussing Ohio State University’s compact RCS measurement system, and a “course description” for a RCS Reduction class offered at Georgia Institute of Technology. In addition, the Petitioner provides an article entitled “2017 Global aerospace and defense industry outlook” forecasting stronger revenue growth in that industry. He also submits information from “Forecast International’s Aerospace Portal” indicating that the U.S. Department of Defense’s budget for 2017 was \$594.1 billion dollars. The aforementioned documents relating to the

⁵ We note that the Petitioner has not presented any communications with such organizations or documentation of their interest in hiring him.

⁶ In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889.

⁷ [REDACTED] notes: “I have never met [the Petitioner] in person and we have only communicated via email. . . . [The Petitioner] has sent me a collection of his publications and accomplishments to review.”

defense industry, however, are not sufficient to demonstrate the national importance of any specific intended area of research identified by the Petitioner.

In determining national importance, the relevant question is not the importance of the fields or industries in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. The record does not include sufficiently detailed or consistent information and evidence to demonstrate whether the Petitioner’s proposed endeavor is to conduct research in pure mathematics, applied and computational mathematics, applied and theoretical physics, aeronautical engineering, and/or electronic and control engineering. Nor has he identified the RCS or AFCS research projects he is proposing to undertake or the capacity in which he intends to pursue those projects in the United States. Without additional information and evidence, the Petitioner has not demonstrated that his prospective work as a university instructor, mathematics researcher, or electrical engineer otherwise stands to have broader implications rising to the level of having national importance.⁸ As the record does not sufficiently identify or explain the Petitioner’s proposed endeavor(s) to demonstrate that it meets the first prong of the *Dhanasar* analytical framework, consideration of the remaining prongs would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of S-S-*, ID# 1714484 (AAO Nov. 1, 2018)

⁸ Although the possible activities he listed likely have substantial merit, the Petitioner has not sufficiently identified his proposed endeavor and therefore does not meet the first prong of the *Dhanasar* framework.